

Environmental Protection Agency
Regional Inspectorate
McCumiskey Road
Dublin 14

25th October 2024

Re: Response to Proposed Direction relating to commercial peat extraction

Dear Ms. McDonnell,

I wish to acknowledge receipt of your recent letter dated 25th September 2024, referencing an 'Extension of Time for Response to Proposed Direction issued pursuant to Section 63(3)(c) of the Environmental Agency Protection Act 1992 ... relating to commercial peat extraction'.

In this regard it should be noted that Westmeath County Council submitted a detailed response to your Proposed Direction which issued to your office on 2nd August 2024.

As already brought to the attention of the EPA, the information / measures sought by the EPA would be (i) extremely resource intensive due to the nature of the developments; complexity and multiple amendments to relevant legislation since 2000 and indeed before; the timespan of many of the sites cases *viz a viz* these legislative changes; the often multiple owners involved, if indeed known; Section 4(4) of the PDA 2000 (as amended); and the known difficulties in establishing sizes of developments etc. and (ii) the impracticality of diverting significant (and limited) resources to this exceptional, resource intensive task, to the detriment of the continued delivery of the Local Authority's routine statutory functions.

The practical difficulties, timescales involved and levels of resources required (both staff and financial) together with the questionable chances of successful resolutions under the current regime within which Local Authorities and the EPA operate have, we believe, been demonstrated by the cases in Westmeath over recent years.

It would be more feasible and practical for the proposed Regional Enforcement Authority when established under the new Planning & Development Act 2024, to deal with these complex multi-county environmental, legislative and practical issues. We would

recommend the commencement of a dialogue with our parent Department (DHLGH) in this regard and we would be happy to support and attend same.

The Proposed Direction, in its introduction refers to an 'assessment' under Section 63(2). It refers to 'unauthorised commercial peat extraction'. The underlying rationale and reasoning in relation to the assessment is not disclosed.

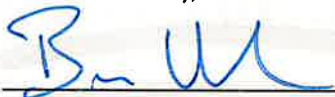
Paragraph 1 of the Proposed Direction requires the Council, *inter alia*, to make a 'general countywide written enforcement plan'. The Council has concerns in relation to its jurisdiction to prepare such a plan having regard to its functions, powers and duties under the Planning Act including, *inter alia*, the status of such a plan within the legislative provisions, the interaction between the executive and the elected members of the Council and compliance with EU law including the SEA Directive.

The Council has concerns in relation to its jurisdiction including the legal inter-relationship between such an enforcement plan and the powers conferred on the Council as a Planning Authority in Part VIII of the Planning Act [Enforcement]. There is no express provision for such a plan within Part VIII or any other part of the Act.

By reference to paragraph 2 of the Proposed Direction, the request for the local authority to prepare 'specific written enforcement plans' for particular locations and 'detailed specific steps to be taken' requires careful consideration of the jurisdiction to prepare same. For the reasons set out above, the legal issue in relation to specific written enforcement plans, the jurisdiction to prepare and adopt same, the interaction at local authority level between the executive and the elected members, public participation and the wider implications at national and regional level and the potential for jurisdictional issues to arise in the absence of amending legislation are issues that need to be further carefully considered.

It is considered that the terms of the Proposed Direction are premature pending implementation of the new Planning Act. In this regard careful consideration is necessary in terms of the impact that the preparation of enforcement plans might have in terms of, for example, the initiation of enforcement proceedings within statutory timeframes.

Yours sincerely,



Barry Kehoe
Chief Executive